

## Initial Concerns and Comments, draft Declaration of Student Rights

Joseph Hickey, April 15, 2010

### Under the Scope section, point 1:

"This Declaration applies to all students registered for a course or program of study..."

- The University has demonstrated its readiness to unilaterally deregister a student without following any formal academic procedure (e.g. the case of Marc Kelly).
- This provides a very easy way for the administration to avoid the principles of this Declaration when it does not like a particular student – simply deregister a student and the Declaration no longer applies.
- The "scope" must be worded in such a way as to protect students against such actions.
- The Declaration should foresee illegitimate deregistration and be written so as to strongly protect students in this regard.

### Under the Scope section, point 3:

"This Declaration applies to the University's academic activities and to social activities organized by the University."

- What about activities organized by other members of the university community? What about student-organized activities? Of course student rights must still be maintained during student-run activities.
- This is crucial during student-run activities that the University administration does not approve of. An example of one such student-run event is the February 3, 2010 "Chalking Day", where students exercised their freedom of expression on campus despite threats and intimidation from campus security.
- Having a Declaration in place that only permits student rights during University-approved events permits the University to crack down on students at student-run events from the position that these students do not have rights at these events following the scope of the Declaration.
- This is one important negative feature of the draft Declaration: this document as structured could be used to remove from students rights that they currently enjoy.

### Under the Interpretation section, point 2:

"If there is a conflict between a collective agreement and this Declaration, the provisions of the collective agreement prevail."

- This has been used as a loophole in the past to avoid student complaints. For example, student Philippe Marchand's Policy 110 complaint against a professor was dismissed after an excessive

period of time (more than one year) because the professor was protected from the complaint by his collective agreement.

- This point of the “interpretation” section must be written in such a way as to not allow the administration to use technicalities of the collective agreement to block student complaints. We need to foresee some of the complications that could arise due to this Declaration, based on the student body’s past experiences. This requires an extended consultation period.

### Under the Rights section, point 1 (Fundamental rights):

“Students have the right to exercise... freedom of peaceful assembly and association.”

- What about “protest”? Student must have the explicit right to protest. This is a key right for students.

“Students rights... will be applied so as to respect democratic values and the welfare of the University community as a whole...”

- This is preposterous. Who is to judge that an individual student exercising his or her individual rights has acted so as to respect the welfare of the University community as a whole? We fall into the same trap as with the Ann Coulter freedom of speech fiasco. There we learned that freedom of speech is precisely for the speech that you are not comfortable with. You simply cannot have freedom of speech in an environment where the “University community as a whole” is protected from unpopular ideas.
- Even more importantly, this notion of “the welfare of the community” has been used illegitimately by the University administration, for example in the case of Marc Kelly, who was unilaterally deregistered in “everybody’s best interest” by the Vice-President Governance last November. The VP Governance’s letter stated: “it has been decided that it is in everyone’s best interest that you pursue your studies at another institution. Your attempted online registration for the Winter 2010 semester is not accepted.” No mention is made about how “it” was decided that to expel a student without reason was in the best interest of the University community. This letter can be found at <http://rancourt.academicfreedom.ca/marckelly/Nov2009-letter=DD-to-SAC=final-solution.pdf>
- We must have more time to revise this wording of the Declaration, especially given the very recent abuses of power on this point! Putting this statement about the “welfare of the community” in a negotiated formal Declaration will be a serious danger to students.
- A further point in this regard comes from the “Tri-Council Policy Statement”, a joint statement made by Canada’s highest academic granting bodies (NSERC, SSHRC, and the Medical Research Council), which states that:

“Certain types of research, particularly in the social sciences and the humanities, may legitimately have a **negative effect** on public figures in

politics, business, labour, the arts or other walks of life, or on organisations. Such research should not be blocked through the use of harms/benefits analysis or because of the potentially negative nature of the findings. The safeguard for those in the public arena is through public debate and discourse and, *in extremis*, through action in the courts for libel.”

**and**

“REBs (Research Ethics Boards) should recognize that certain types of research — particularly biographies, artistic criticism or public policy research — may legitimately have a negative effect on organizations or on public figures in, for example, politics, the arts or business. Such research does not require the consent of the subject, and the research should not be blocked merely on the grounds of harms/benefits analysis because of the potentially negative nature of the findings.”

[http://www.umanitoba.ca/research/media/TCPs\\_gov\\_canada\\_statement.pdf](http://www.umanitoba.ca/research/media/TCPs_gov_canada_statement.pdf)

- In this Tri-Council Policy Statement, the top granting bodies of Canadian academia have insisted that research having a negative effect on the University or University community must not be blocked. We have to remove any wording from this Declaration that could be used in any one group’s definition of “the good of the community” to remove students’ rights to protest, research, speech, etc.

#### Under the Rights section, point 2 (Absence of discrimination):

“All students have the right to... freedom from discrimination and harassment; and to a healthy, safe and peaceful atmosphere... in accordance with the Ontario Human Rights Code.

- It is unclear whether the “discrimination and harassment” indicated here include the types of discrimination and harassment laid out in the Ontario Human Rights Code, or if it is only a “safe and peaceful atmosphere” that is covered by the Code?
- The Ontario Human Rights Code is not nearly as detailed as the CUPE-2626 (Union of Students Employed at the University of Ottawa) collective agreement, Articles 10 and 11. These articles make much more student-specific statements such as protection from discrimination based on political belief or school of thought and from harassment based on violation of rights entitled to members of the academic community (e.g. academic freedom). The CUPE-2626 articles on harassment and discrimination should be used as a starting point for the formulation of this section of the Declaration.
- Protection from discrimination based on student status should be added.

## Under the Rights section, point 4 (Academic rights):

"Students' academic rights include the rights to:"

### Sub-point a

"quality educational programs that reflect the advancement of knowledge in each discipline and area of studies and that enable students to develop critical thinking and other necessary skills."

- Professors control ALL of this under their collective agreement. This is academic freedom for professors. We need academic freedom for students. Students need the right to contribute to how they develop critical thinking and other necessary skills.

### Sub-point b

"the right to: a research environment that is... characterised by the pursuit of academic freedom"

- This should be, rather: "Students' academic rights include the rights to: b) Academic freedom, which includes, but is not limited to, a research environment that is ethical..."
- Academic freedom for students is already put into writing in several high-level policy statements. For example, the Association of Universities and Colleges of Canada, of which the University of Ottawa is a member, states that:

"It is [at the University] that **academic freedom**, in its collective form of institutional autonomy, can ensure freedom of inquiry for individual faculty members and **students**."

**and**

"In their relations with students, faculty members and others who work in the universities have an obligation to ensure that the **students'** human rights are respected and that they are encouraged to **pursue their education according to the principles of academic freedom** embodied in the university itself."

[http://www.aucc.ca/\\_pdf/english/statements/1988/aucc\\_academic\\_freedom\\_e.pdf](http://www.aucc.ca/_pdf/english/statements/1988/aucc_academic_freedom_e.pdf)

### Sub-point h

"an appeal process for academic matters..."

- This must read "a fair and just appeal process for academic matters."

### Sub-point j

"make a complaint without fear of reprisals or threats."

- This should read “without threat, intimidation, or reprisal.” The words “without fear” do not help! They cast students, in writing, as timid and weak whereas we must, with this Declaration, take our stance as full members of the academic community with the same rights as faculty and administrators. I believe the words “without fear” should be removed where they appear in the Declaration.

### Under the Rights section, point 5:

#### Sub-point b

“heard in order to express their view, without fear of reprisals or threats;”

- Same point as above.

#### Sub-point c

“accompanied by a person of their choice...”

- The statement “or be represented by a person of their choice” must be added here.

To point 5, a Sub-point e should be added that includes:

“In academic fraud allegation cases, the University has the burden of the proof.” This is modelled on the criminal system, and is how discipline process works for TA’s under the CUPE-2626 collective agreement.

### Under the Rights section, point 6:

#### Sub-point d

“Graduate students also have the right to defend their thesis within a reasonable time”

- A statement such as “taking student travel circumstances into account,” should be added here.

### Under the Rights section, point 7 (Language rights):

“Students language rights include the right to: express themselves and receive quality services in the official language of their choice...”

- The word services needs to be clarified: does this include teaching? Supervision?

### Under the Rights section, point 9 (Participation in collegial governance):

- It is important that no student representative suffer discrimination or loss of his or her position based on student status. For example, students need protection in the event that one loses one’s student status illegitimately while holding a position in the collegial governance structure.

"Students have the right... to representation... on [departmental, faculty, and University committees and their executive]... particularly when policies and regulations concerning students, changes to the University's strategic plan and program evaluations are being addressed."

- This "particularly" statement limits student participation. Students as important stakeholders in the University have every right to be on every committee and executive for all decisions about the University. We must change the wording of this phrase.

#### Under the Rights section, point 10 (Participation in collegial governance):

"Except where student elections are provided for..."

- No exceptions. The student representative whom students elect is the person who will be on the committee. Period.

"...the University will not unreasonably refuse to appoint the nominated candidate."

- The word "unreasonably" is unacceptable. Who decides what is reasonable or not? The administration has denied student appointed representatives unreasonably in the past. For example, Marc Kelly was appointed to be the undergraduate student representative to the Senate Appeals Committee, but his nomination was turned down due to "conflict of interest" because he had an appeal in process. This is clearly unreasonable! A member of the Senate Appeals Committee can have an appeal in process and simply not participate in his or her own appeal decision if there is a conflict of interest! This is like saying that the victim of a rape can never sit on the jury in someone else's rape case.

#### Under the Remedies section, point 1

"... a student must use the remedies contained in the University's academic and administrative policies. In the absence of such a remedy, and where warranted, the student must first attempt to communicate with the person concerned..."

- This is outrageous. A Declaration of Rights cannot tell students what they "must" do in order to complain. This limits, more than ever before, a student's ability to protest unjust treatment and to communicate what is happening to other students and other members of the academic community. This is the Code of Conduct reappearing in the form of "student rights".

"... the student can submit a complaint... within a reasonable time frame."

- Spell out the "reasonable time frame" for the response from the administration to a student's complaint. Policy 110 complaints are notorious for taking excessive time to be addressed. For example, Philippe Marchand's Policy 110 complaint lasted over one year. My (Joseph Hickey) Policy 110 complaint has been in process for over one year, with time laps of many months between responses from the administration.

### Under the Remedies section, point 9

Add Sub-section d:

"Inform the plaintiff in writing and give reasons for its decision."

### Under the Remedies section, point 12

"This Declaration may be amended by a Senate motion following a recommendation from the Declaration Evaluation Committee..."

- Any such motion to amend the Declaration of Rights must consult the student community at large.

Due to these and other serious concerns expressed by students, I ask the GSAED and SFUO to act immediately to extend the consultation period on the draft Declaration of Student Rights into the Fall 2010 semester to allow for adequate student participation in the formulation of the Declaration.